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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/310,965 05/13/99 SCHALL

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EXAMINER

CAHN & SAMUELS LLP  
2000 P STREET N W  
SUITE 200  
WASHINGTON DC 20036

VII, I

ART UNIT

PAPER NUMBER

3764

DATE MAILED:

01/08/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/310,965

Applicant

Schall, Jr.

Examiner

Justine Yu

Group Art Unit  
3764



☒ Responsive to communication(s) filed on Oct 12, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) 5, 11, 12, and 17-20 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-4, 6-9, 13, 15, and 16 is/are rejected.

☒ Claim(s) 10 and 14 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### DETAILED ACTION

1. This office action is responsive to the election response and amendment filed on 6/6/00 and 10/12/00, respectively. As directed by the election response and amendment, claims 4, 5, 10, 11, and 13 were amended, claims 14-20 were added, no claim is canceled. Thus, claims 1-20 are presently pending in this application. In addition, claims 5, 11, 12, and 17-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 10.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to provide adequately teach how to make and use the invention, i.e., fails to provide an enabling disclosure of means for rotating the platform. It is not understood which mechanism is being used to rotate the platform.

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4. Claims 2, 4, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, lines 2-3 the term "the horizontal plane" lacks antecedent basis. In line 4, it appears that the term "tapered out" is misdescribed, shouldn't it be --flared out--? In lines 6-7, the terms "a top surface" and a conical envelope" are confusing and it is not clear how to define the structural relationship between these elements and the device.

In claim 4, 15, the term "said regulating components" lacks antecedent basis.

In claim 13, line 2, it is not clear what is the structural relationship between the "cylindrical base" and the "rim". Shouldn't the rim be part of the base? In line 8, the term "said rim engages said rim of said lower housing" is not true, see figure 4b. In line 11, the term "therethrough" is unclear as to which part is being referred. In lines 14 and 15, the term "said means" lacks proper antecedent basis; and the term "an internal space" is indefinite because it is not clear how to define such structure. Since claim 13 is too confusing, no art rejection will be applied.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Bishow (Pat. No. 4,193,592).

Bishow teaches a device comprising an upper platform 12, a lower housing 24 connected to the upper platform via regulating components (20, 28) and lower housing cap 14, and a bearing element 22.

7. Claims 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Zetocha et al (Pat. NO. 5,683,337).

Zetocha teaches a device comprising an upper platform 20, a lower housing 30, cap 60, bearing element 50, and regulating components 40, 42, 44.

8. Claims 6, 7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hartz (Pat. NO. 4,905,994).

Hartz teaches a lower housing 22, a cap 24, 26, bearing element 28, an upper platform 30, a regularly component 242, 262, see figure 14.

Regarding claim 9, notes the openings in figure 3.

9. Claims 6-9, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bonewitz (Pat. No. 3,100,639).

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Bonewitz teaches a device comprising a lower housing 14, a cap 20, a bearing element 33, regulating components 50, a first pad 27 (claim 15), a stopper 30 (claim 16), a wall forming an opening 29 (see figure 3), and the lower housing having opening 19.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. <sup>s</sup> Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishow in view of Montgomery (Pat. No. 5,226,868).

Bishow teaches a handle 16 but does not explicitly disclose the specific structure as recited in the claim. However, Montgomery teaches an inclined handle 82 including a tall upright portion, a short upright portion, and a gripping area having an arch (88, 90). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modified Bishow's handle with the handle structure as taught by Montgomery, so as to be more easier to be gripped by the user. In addition, the features of having the particular dimensions for the handle such as tapered from the short upright portion to the tall upright portion, or having the tall upright portion being tapered out from the gripping area to the upper platform are considered as obvious design preferences within the knowledge of one skilled in the art, since it appears that

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the modified Bishow handle would perform equally well with the tapered gripping area and tall upright portion.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bishow in view of Montgomery as applied in claim 1 above, and further in view of Zetocha et al (Pat. No. 5,683,337).

Bishow teaches individual bearings 22 but lacks a bearing element having an opening passing therethrough. However, Zetocha teaches a bearing element having an opening passing therethrough. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bishow's bearings with the bearing element having an opening passing therethrough as taught by Zetocha, since such bearing structure is notoriously old and well known in the art.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zetocha et al in view of Anbar (Pat. No. 3,593,994).

Zetocha lacks a footing attached to the lower housing. However, Anbar teaches a footing 13. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Zetocha's lower housing with a footing as taught by Anbar, in order to prevent slippery.

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14. Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartz.

Regarding claim 8, Hartz lacks a footing attached to the lower housing. However, such feature is notoriously old and well known in the art to prevent slippery

Regarding claim 15, Hartz lacks a first pad attached to the upper surface of the upper platform. However, the feature of having a pad attached to the upper surface of the platform is notoriously old and well known in the art to prevent slippery.

*Allowable Subject Matter*

15. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

16. Claims 10 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. Applicant's arguments filed 10/12/00 have been fully considered and agreed that the claims 1-3, 6-9 and 13-16 are generic.



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*Conclusion*

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tidmore (Pat. No. Des. 255,372), Ishikawa (Pat. NO. 5,547,460), Martinez (Pat. No. 5,306,223), Yeh (Pat. No. 5,256,127), Clark (Pat. No. 5,775,119), Lee et al (Pat. No. 4,291,873), Tomitz (Pat. No. 5,813,958), and Simjian (Pat. No. 4,026,279) are cited to show different rotatable exercise devices.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine Yu whose telephone number is (703) 308-2675. The examiner can normally be reached on Tuesday - Friday from 8:30 AM - 6:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Everett Williams whose telephone number is (703) 305-1708.

  
Justine Yu

December 29, 2000